

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. OS 2008-0030

ORDER GRANTING INDIVIDUAL DEFENDANTS' MOTION TO DISMISS

**IN THE MATTER OF THE COMPLAINT FILED BY DOUGLAS BRUCE REGARDING
ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY SCHOOL
DISTRICT 11; TAMI HASLING, TOM STRAND, JOHN GUDVANGEN, JANET
TANNER, SANDRA MANN, BOB NULL, AND CHARLIE BOBBITT, AS MEMBERS
OF THE SCHOOL BOARD; and DOES I-V.**

This matter is before the Administrative Law Judge upon the individual defendants' motion to dismiss the complaint against them. Complainant filed no response.

In a complaint filed September 23, 2008, Douglas Bruce (Complainant) alleged that the School District and the individual defendants violated § 1-45-117(1), C.R.S. by distributing a flyer that Complainant contends expressly promoted local ballot issue 3E pending before the electorate in the November 4, 2008 election. The individual defendants move to dismiss the complaint as to them because they say the statutory prohibition applies only to public entities, not to individuals. They rely upon § 1-45-117(1)(a)(I) which reads, in pertinent part:

No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any ...

. . . .

(B) Local ballot issue

Although the prohibition of § 1-45-117(1)(a)(I) refers only to public entities and makes no reference to individuals, a recent amendment to the sanctions provision, § 1-45-117(4), C.R.S., suggests that individuals may now be held personally liable to reimburse a public entity for amounts those individuals caused the entity to contribute or expend in violation of the statute. The amended provision reads:

Any violation of this section shall be subject to the provisions of sections 9(2) and 10(1) of article XXVIII of the state constitution or any appropriate order or relief, *including an order directing the*

*person making a contribution or expenditure in violation of this section to reimburse the fund of the state or political subdivision, as applicable, from which such moneys were diverted for the amount of the contribution or expenditure, injunctive relief, or a restraining order to enjoin the continuance of the violation.*¹

Section 1-45-117(4), C.R.S. *as amended by HB 08-1041, effective April 10, 2008 (italics added).*

Nevertheless, in the absence of any response by Complainant, the individual defendants' motion to be dismissed will be granted. Pursuant to Office of Administrative Courts Rule of Procedure 10.D, failure of the responding party to file a responsive brief may be considered a confession of the motion.

Accordingly, the motion to dismiss is GRANTED. In future filings, the case caption will be amended to delete reference to the individual defendants.

Done and Signed
October 29, 2008

ROBERT N. SPENCER
Administrative Law Judge

¹ A "person" is defined by § 1-45-103(13), C.R.S. and Colo. Const. art. XXVIII, §2(11) to include "any natural person."

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above **ORDER GRANTING INDIVIDUAL DEFENDANTS' MOTION TO DISMISS** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Rep. Douglas Bruce
P.O. Box 26018
Colorado Springs, CO 80936

Brent E. Rychener, Esq.
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Colorado Springs, CO 80903

and

William Hobbs
Secretary of State's Office
1700 Broadway, Suite 270
Denver, CO 80290

on this ____ day of October 2008.

Court Clerk